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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1286 OF 2003

Ramaji Deu Labad ... Appellant

V/s.

The State of Maharashtra ... Respondent

Ms.Smita Gaidhani, Advocate appointed for Appellant
Mr.P.S. Hingorani, APP, for Respondent

CORAM: **D.G. DESHPANDE &**
SMT.NISHITA MHATRE, JJ.

DATED: **JUNE 25, 2007**

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. The accused appellant has impugned the judgement and order of the I Adhoc Additional Sessions Judge, Palghar dated 10.6.2002. By this judgment, the appellant has been convicted under section 302, IPC and sentenced to suffer imprisonment for life and fine of Rs.1000/-. He has also been convicted under section 201, IPC and has been sentenced to 3 years R.I. and fine of Rs.500/-. The appellant was charged with the commission of the aforesaid offences alongwith one Suresh Krushna Navkar, accused No.2 who has been acquitted by the trial Court.

2. The case of the prosecution is that Nilesh and the appellant were farm hands and were working in the same field owned by one Vijay Patil. On 7.10.2000, the appellant went to meet the deceased Nilesh who was

sleeping in his aunt, Parvati's house. Nilesh left Parvati's house with the appellant and another farm hand saw them proceeding towards Palghar. The complainant Nilesh's father searched for Nilesh as he did not return home. On 10.10.2000, a dead body was found lying in the field of one Parulekar. He reported the matter to the police and ADR No.31 of 2000 was registered. An inquest panchanama and a spot panchanama were recorded on the next day i.e., on 11.10.2000. According to the prosecution, a white shirt with black stripes which was found lying near the dead body has been seized. The dead body was completely decomposed and, therefore, the autopsy was conducted at the spot where the body was discovered. An Advance Death Certificate was issued thereafter. The postmortem examination revealed that the victim had sustained injuries to the spinal cord at the neck as also certain other injuries. The dead body was then handed over to the municipal authorities for disposing it off as nobody had claimed the body. On 17.10.2000, the complainant was called to the police station to identify the shirt found near the corpse. According to the prosecution, the complainant identified the shirt to be that of Nilesh. A complaint was lodged by him thereafter against both the accused. According to the prosecution, they were able to recover the branch of a tree used for assaulting Nilesh at the instance of the accused. The clothes of the accused were also seized. The reports of the Chemical Analyser indicated

that the blood stains on the clothes of the deceased and on the branch of the tree are of the same blood group. The accused were then charged and tried for committing offences punishable under sections 302, 201 r/w 34 of the Indian Penal Code. As aforesaid, while accused NO.1 i.e., the present appellant was convicted for both the offences, accused No.2 was acquitted.

3. The case is entirely based on circumstantial evidence. The prosecution has relied on the testimony of 11 witnesses in support of its charges against the appellant. The main thrust of the case of the prosecution is that the victim Nilesh was last seen in the company of the appellant and, therefore, it was the appellant who had committed the crime. The prosecution has relied on the seizure of the blood stained shirt of the deceased which was identified by the complainant. Besides this, the prosecution has relied on the medical evidence on record as well as the recovery of the weapon of assault and the reports of the Chemical Analyser.

4. Ms.Gaidhani, appearing for the appellant, submits that the prosecution has not identified the corpse to be that of Nilesh. The corpse was not photographed for it to be identified. She points out that the time of the death has not been ascertained in a proper manner although the Doctor who has been examined in this case as PW6 has opined that the death occurred

about 3 to 4 days prior to the autopsy which was performed on 11.10.2000. The learned advocate also brings to our notice that there are several improvements in the testimony of the witnesses especially PW1 and PW11 to support the theory of the prosecution that the victim was last seen together with the appellant. The learned advocate criticises the case of the prosecution which is based according to her only on the identification of a shirt which was lying near the corpse. She submits that this piece of evidence could not with certainty prove that the dead body was that of Nilesh. She, therefore, submits that if the corpse itself has not been identified as that of Nilesh, the theory of the prosecution must fail. Apart from this the learned Advocate urges that the impugned judgement should be set aside since the recovery of branch allegedly used for assaulting the deceased was made at the instance of accused No.2 and not the appellant.

5. We have perused the evidence on record as well as the judgment impugned in this case. On a scrutiny of the evidence, we find that we are unable to concurr with the findings of the trial Court that the appellant is guilty of the murder. The circumstances on which the prosecution relies do not in any manner lead to the irrebuttable conclusion that the appellant is guilty of the murder.

6. The first question is whether the corpse which was found in the field of one Parulekar was actually that of Nilesh. Admittedly, no photographs were taken of the dead body. There is no identification of the body at all by any person. Parulekar who has been examined as PW2 has stated that when his workers pointed out the body to him on 10.10.2000 at about 6 pm, he informed the police immediately. He has stated that the body was in a putrefied condition and the victim was wearing a shirt. He could not describe the shirt in his testimony. The trousers worn by deceased were not found at the spot. In his crossexamination, the witness has admitted that he had not informed the police that the body was found with a shirt on it. According to the inquest panchanama, the body was found naked and a shirt was lying near it. This shirt was seized. It was white with black stripes. The inquest panchanama has been proved by the Investigating Officer. No panchas were examined to prove either the inquest panchanama or the spot panchanama. There are no special identification marks on the shirt except a label "Horizon" on the collar of the shirt. Thus it is difficult to accept that PW1 was able to identify the shirt which was seized as that of his son. The seizure of this shirt and its identification by the complainant cannot lead one to the conclusion that the corpse which was found in Parulekar’s field was in fact that of Nilesh. There is no other piece of evidence connecting the corpse to

Nilesh. In such circumstances, the prosecution has failed to prove the identity of the corpse and therefore the case of the prosecution must fail.

7. Besides, the time of the death has not been recorded with certainty. According to PW6, the Doctor who performed the autopsy, the death of the victim occurred 3 to 4 days prior to the postmortem examination. The Doctor has opined that the probable cause of death was cardio respiratory failure due to injury to vital organs like brain (medulla) and injury to spinal cord and dislocation of atlanto axial joint which caused a neurogenic shock. The Doctor has also opined that the stick blows given on the neck, head and back could cause the injuries found on the corpse. The Doctor in his crossexamination has stated that he has found adipocere formation over the abdomen. This condition occurs only after 7 days of death. Maggots were noticed eating into the body. However, according to Modi’s Medical Jurisprudence, the condition of adipocere formation is seen only after 7 days of death and maggots do not attack the body and decomposition does not occur as quickly in the month of October as it would in the summer months. Thus, the actual date of death has not been proved.

8. Nilesh, the victim, was missing after he left the house of PW11 alongwith the appellant, according to

the prosecution. PW1, the complainant, has narrated that Nilesh accompanied the appellant from Parvati's house. However, he was not a witness to this incident and therefore this part of his testimony is nothing but hearsay. PW11 Parvati has spoken about the appellant reaching her house and Nilesh leaving from there alongwith the appellant. However, both these witnesses did not relate this fact to the police when their statements were recorded. Obviously, therefore, these are improvements in their versions. The Investigating Officer who has been examined as PW10 has denied either that PW1 or PW11 had spoken about Nilesh leaving the house of PW11 alongwith the appellant when their statements were being recorded. Thus, these are obvious improvements in their statements. Apart from this, PW11 claims that the appellant and the deceased left her house at about 12 noon on 7.10.2000. PW9 who was a co-worker in the field on which both Nilesh and the appellant were employed claims to have seen them at 3 pm near his house at Kharalpada. This witness in his crossexamination has stated that the harvesting season was in progress when the police made enquiries with him about the crime. He has admitted that no worker was permitted leave during the harvest season and their duty hours were between 8 am and 6 pm. This witness is a cousin of the deceased. Assuming that this witness is correct when he says that he had seen the appellant together with the victim at about 3 pm on 7.10.2000 it

would not necessarily lead to the conclusion that the appellant is guilty as charged.

9. The prosecution has then sought to rely on the recovery of blood stained trousers of the deceased and the blood stained branch of a tree. This recovery has been made at the instance of accused No.2. In his disclosure statement he has further stated that the appellant gave the branch to him while he in fact assaulted the victim with it. Such a disclosure statement by accused NO.2 cannot in any manner be used against accused No.1 i.e., the appellant herein. Therefore, the recovery of the trousers and the branch is not proved. Besides, the panch witnesses PW3 and PW8 who were examined to prove the seizure of the clothes of the accused have been declared hostile. In such circumstances, it is difficult to believe the story of the prosecution.

10. On evaluation of the evidence on record, we are unable to accept the case of the prosecution. The circumstances which the prosecution relies on are not proved. In any event, these circumstances, do not form a chain which leads to the unmistakable conclusion that it is the appellant who has committed the crime and therefore, he must be acquitted. Hence the following order:

ORDER

i) Appeal is allowed.

ii) The conviction and sentence imposed upon the appellant/accused is set aside. He is acquitted of the charges levelled against him.

iii) The appellant/accused should be set at liberty forthwith, if not otherwise required in any other case.

iv) The fine, if any, paid by the accused/appellant, shall be refunded to him.

11. Appeal is disposed of accordingly.

(SMT.NISHITA MHATRE, J.) (D.G. DESHPANDE, J.)